IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.5883 OF 2004

Shri Dilip H. Mehta
Smt.Rasila D. Mehta ... Petitioners

V/s.

Oriental Bank of Commerce
& Ors. . ... Respondents

Mr.Prabhakar Naidu with Bharat Gandhi for Petitioners
Ms.Jayshree Kurup with Shri Chinchalikar for Respondents

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **JANUARY 24, 2005**

P.C.:

. By this petition, the Petitioner has challenged the order passed by the Debt Recovery Appellate Tribunal under section 21 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993. This section provides that an appeal against the order of Debt Recovery Tribunal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal 75% of the amount of debt so due from him as determined by the Tribunal under section 19. The Act further gives a latitude to the Appellate Tribunal to reduce the amount or waive the same for reasons to be recorded in writing by it Such a prayer was made before the Appellate Tribunal and the Appellate

Tribunal by its reasoned order, which is impugned in this petition, has reduced the amount of deposit from 75% as contemplated by section 21 to 50% and has recorded reasons for so doing. The contentions raised in the appeal for waiver and reduction in the amount were considered by the Tribunal and then the order of reducing the amount to 50% is passed.

2. This order is impugned before us under Article 226 of the Constitution of India. Section 21 clearly gives jurisdiction to the Appellate Tribunal to waive or reduce the amount to be deposited under section 21. This discretion has been exercised by the Appellate Tribunal. In the exercise thereof, the amount has been reduced to 50% and reasons are recorded for so doing. The Tribunal has, thus, therefore, not committed any jurisdictional error in reducing the amount or refusing to reduce it any further.

3. Reliance was placed on a judgment of the Supreme Court reported in **2004 (3) Mh.L.J. 1** by the learned Advocate for the Petitioner where the Supreme Court of India has observed that section 96 of the Code of Civil Procedure r/w Order 41 Rule 11 thereof does not provide for deposit of any amount as condition precedent for entertaining the appeal. This judgment is of no use to the Petitioner as it is based on the wordings of the

provisions of Code of Civil Procedure which is the general law. Debt Recovery Act of 1993 is a special legislation by the Government of India meant for the purposes of recovery of debts due to financial institutions and banks. The provisions are self explanatory and adequate. There is no challenge to the provisions of section 21 of that Act. Then reliance was placed on a judgment of the Supreme Court reported in **2002 SAR (Civil) 410** where the Supreme Court was considering the provisions of Order 37 of Code of Civil Procedure and while dealing with the power to grant leave to defend conditionally or unconditionally vested in the civil Court including the High Court was considered and it was observed that unconditionally leave to defend could be granted on the facts of that case. The power of the Court has not been negated by this judgment. That apart, provisions of Order 37 of Code of Civil Procedure provided for summary trial of suits with permission to grant leave to defend conditionally or unconditionally. This aspect is entirely different from the conditions spelt out in the Debt Recovery Tribunal Act where a self-contained code is provided by the Legislature for conducting of the proceedings under that Act. That being so, this judgment is also of no use to the Petitioner.

4. Then reliance was placed on the judgment of the

Delhi High Court in *D.Kochhar v/s. Canara Bank & Ors.*, **2001 AIHC 1821** which also dealt with Order 37 of the Code of Civil Procedure. For the same reasons as mentioned in the above paragraph, this judgment is also of no help. Reliance was also placed on the judgment in the case of *Abdul Rahman v/s. Prasony bai & Anr.*, **AIR 2003 SC 718** for contending that arguable questions of law regarding limitation were raised and were, therefore, liable to be tried. The question of limitation was tried by the Recovery Tribunal and the Appeal against that was maintainable before the Appellate authority. It is the appeal which is being rejected by recourse to Section 21 of the Recovery of Debts due to Banks and Financial Institutions Act and consequently, there being no error of jurisdictional law committed by the Appellate authority, we see no reason to exercise our power under Article 227 of the Constitution of India. In the result, the Petition fails and is dismissed.

5. In view of the fact that the order made by the Appellate Tribunal is squarely covered under the provisions of Section 21 and there is no question of constitutional importance or interpretation involved, we see no reason why this order be stayed. Therefore, the request made on behalf of the Petitioner is rejected.

6. Parties to act on an authenticated copy of this order.